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The Solicitors' Journal

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Current Topics.

Lord Justice Scrutton.

By the sudden death of Lord Justice SCRUTTON while on holiday in his favourite county of Norfolk, the Court of Appeal is greatly impoverished, losing in him its oldest, its most learned, and its strongest judge. Little did those who saw him at work at the end of last term, apparently in robust health, think that they were to see his face and hear his voice no more. It is true that somewhat earlier he was absent from the court for a day or two—a most remarkable occurrence, for he seemed to possess the secret of perpetual health ; but all his life he had been a hard worker, even to the end writing his judgments with his own hand, while his colleagues dictated theirs and had them typed ; and it may be that this continuous absorption in work had told upon him. Both academically and professionally his career was brilliant. At school at Mill Hill under Sir J. A. H. MURRAY, of Oxford Dictionary fame, to whom in his capacity of lexicographer, the future Lord Justice was to give assistance and to be rewarded by an acknowledgment in the preface to "Professor T. E. SCRUTTON," the late Lord Justice being at the time the occupant of the chair of Constitutional Law at University College. At Cambridge he carried off no fewer than four times the York Prize for essays on various branches of law, all of which were published, and one of them—that on copyright—expanded into a treatise for the use of the profession. With his family's association with shipping he soon included among his specialities a treatise on charter-parties and bills of lading which soon attained the rank of a classic, and which is still in constant use by practitioners in the Commercial Court.

His Judicial Career.

IT was in the Commercial Court that the late Lord Justice won his spurs, being usually pitted against the late Lord SUMNER (then Mr. J. A. HAMILTON) and as both were skilled in fence and profound lawyers, it was an intellectual treat to witness their contests. HAMILTON went to the Bench first, being followed at no long interval by his opponent, and each in turn presided in the court where their contests had been waged, but the somewhat brusque manner of the late Lord Justice rather militated against his personal success for a time. At that period and perhaps for longer the *fortiter in re* was more conspicuous in his manner and speech than the *suaviter in modo*, and than was generally relished, but when in due time he was promoted to the Court of Appeal his manner mellowed considerably, although even in that serener atmosphere sparks would occasionally fly. Many will recall the unfortunate incident a year or two ago when there came up on appeal one of the late Mr. Justice MCCARDIE'S judgments in which that very learned judge thought it necessary, while Lord Justice SCRUTTON thought it both unnecessary and unwise, to divagate into matters not germane to the legal question involved. Other judges also felt the critical lash and were heard to complain of the way in which their judgments had been "scruttonised." As against these judicial foibles must be set occasional pleasant little sallies from the Bench. When, for example, Mr. BRUCE THOMAS, now the President of the Railway Rates Tribunal, was called within the bar, the Lord Justice, instead of contenting himself with using the customary formula, "Mr. BRUCE THOMAS, do you move ?" altered it thus : "Mr. BRUCE THOMAS, do you, or any of your numerous railway companies, move ?" Or, again, when receiving from a well-known silk a congratulatory letter on being promoted to the Court of Appeal, he returned thanks, but added, "Now that I have left the Commercial Court you will be able to read the whole of the correspondence," a little hit at the tendency of the K.C. to over-elaborate and to read everything in his bundle of correspondence. It will have been gathered that like other men the late Lord Justice had his judicial foibles, but in reviewing his long, active and successful career, we may truthfully adapt the language of Dr. JOHNSON concerning GOLDSMITH, and say : "Let not his frailties be remembered, he was a very great judge."

Ministry of Health Report, 1933-34.

THE Fifteenth Annual Report of the Ministry of Health (Stationery Office, Cmd. 4664, 6s. net) deals in the course of its 388 pages with the more important business transacted by the department during the year ended 31st March, 1934. The complexity of many of the problems involved and the necessary elaboration with which they are considered preclude even a summary treatment here. It will only be possible to select for brief mention a few from a number of equally important matters. Those interested in or actively concerned with the local services for which the Ministry forms the central authority will, in any case, find recourse to the Report itself essential. The six parts into which the Report is divided relate respectively to public health, housing and town-planning, local government and finance, the administration of the poor law, national insurance and contributory pensions, and, finally, the Welsh Board of Health. The section concerning housing is dealt with elsewhere in this issue. With regard to public health services the importance of periodical surveys with a view to an appropriate combination of local responsibility and an adequate measure of central supervision is emphasised, and it is stated that surveys of these services by medical officers of the department, begun in the latter part of 1930, have been practically completed so far as counties

and county boroughs are concerned. There is an interesting account of the development of public health services from the establishment of the first General Board of Health in 1848 to the Local Government Act, 1929, which, by abolishing the boards of guardians, transferred to the counties and county boroughs a wide range of medical functions. The Report deals also at some length with the co-ordination of the poor law and public health services and of the effect of the transfer of the guardians' duties to the public assistance committees. A parallel assimilation with regard to the central authority was effected by the Local Government Board Act, 1871, under which the Board was responsible alike for public health and poor law administration with its attendant medical functions. The Act of 1929, it is pointed out, indicates as a matter of policy that services—such as the provision of hospitals for the sick, tuberculosis, maternity and child welfare, etc.—which could as a matter of law be performed by the local authorities either under the poor law or under other powers should be separated from the former. County councils are now vested with statutory powers—already possessed or obtainable by county borough councils—to provide hospitals or to appropriate for the sick institutions transferred to them under the Act. The Local Government Act, 1933, is mentioned as forming "an important part of the process of consolidation carried out since the Ministry was created," and it is pointed out that the Act, which came into force on 1st June, replaces, with its 308 sections and eleven schedules, over 900 sections and thirty-three schedules of earlier Acts, of which forty-eight have been wholly repealed and 180 in part.

Poor Law Administration, 1933-34.

FROM the same Report it appears that during the year ended 31st March, 1934, 185,497 persons received institutional and 1,139,546 domiciliary relief, the total of 1,325,043 representing 3·3 per cent. of the population. The corresponding figures for the previous year were 192,513, 1,071,111 and 1,263,624 or 3·16 per cent. of the population. The year under review has, it is said, been a difficult one. The Public Assistance Committees have, in general, been continued to be charged with administration of the transitional payments scheme, the day to day problems of the work being accentuated by the publication of government proposals for the future assistance of the unemployed. The Minister pays tribute to the public service rendered during the past three years by local authorities, often in circumstances of great difficulty and strain—the position not having been rendered easier by the imminence of another system of assistance resting on the view that a distinction has to be made between distress resulting from unemployment and from other causes. In July, 1933, a sum of £500,000 was voted by Parliament for assistance to the distressed areas, the £440,000 allocated to England and Wales being distributed in accordance with a scheme discussed with representatives of local authorities and approved by the Treasury. The share to be received by each district under this scheme was calculated with reference to out-relief expenditure in 1932-33 exceeding the equivalent of a product of a two-shilling rate in that year and being proportionate to that excess. It was provided, however, that no local authority in the distressed areas should receive a grant in excess of the amount equal to the product of a shilling rate, while no grant should be made where the amount would be less than the equivalent of the product of a penny rate. The cost of out-relief during the year amounted to £16,809,000, representing an increase of 10·8 per cent. on the figure for the previous year, the average number of recipients being also higher by 6·5 per cent. Loans sanctioned to counties and county boroughs amounted to £414,769—a drop of over £200,000 on the previous year's figure, but loans sanctioned to councils in respect of extensions and improvements to institutions previously under the poor law but now appropriated to public health and other purposes are not included in this total. The Minister sanctioned the application of £53,471 out of capital moneys in the hands of councils towards defraying capital expenditure and, in addition, works have been approved during the year involving expenditure, for which loan sanction was not required, of £251,559.

The Marriage (Extension of Hours) Act, 1934.

THE passing of this statute, which allows marriages to be solemnised up to 6 p.m., has given rise to some little difficulty amongst Church of England clergy. According to the Canon Law, clergy of the Church of England are forbidden to solemnise marriages after 3 p.m. There is therefore presented to them a conflict between the Statute Law and the Canon Law. The Archbishop of Canterbury has announced that in due course steps will be taken to bring the Canon Law into line with the Statute Law. The effect of this announcement has been that certain of the bishops have informed the clergy of their diocese that they are at liberty so far as their conscience allows them to take advantage, if they so desire, of the permission given by the new Act, though it has to be borne in mind that there is no power of compelling any clergyman to solemnise a marriage at any particular time. The hour for a ceremony of this kind must be fixed by arrangement to suit the convenience of the clergyman who is to officiate. In this connection the Bishop of Rochester has taken occasion to call attention of the clergy of his diocese to a matter which arises under the Marriage Measure, 1930. It would appear that a person whose name is on the parochial roll of any parish is entitled to use the membership so conferred alike for the purposes of the calling of banns and for the selection of the church in which the ceremony is to take place; in other words, enrolment is accepted as equivalent to residence. But it must be remembered that if this privilege is claimed banns must be called both in the parish in which the person is resident, and in the parish of his or her enrolment. Two certificates are required in the place of one, and of course a further certificate in the case of the other party to the marriage if resident in a different parish.

Verdict Vagaries.

THE method, if there be any, by which certain juries arrive at their verdicts appears to be past finding out. Mr. PERKER'S explanation that discontented or hungry jurymen always find for the plaintiff—an explanation which staggered Mr. PICKWICK—may be set aside as too fantastic, but if one probes the question further, it will be found that in many instances the verdict is beyond explanation. Cases come before the Court of Appeal with great frequency in which the court is asked to set aside the verdict by reason of the damages being excessive; more rarely does a case come up to that tribunal where the complaint is that the damages awarded are too small. A case of the latter class was before the court recently in which the trial judge, after the jury had returned their verdict, said to counsel for the plaintiff (who had been seriously injured by an accident owing to the negligence of the defendants' driver): "If this is any assistance to you, I may say that in my opinion the damages are quite inadequate." With that intimation in their favour and with the facts seeming to bear this out, counsel for the plaintiff had little difficulty in persuading the Court of Appeal that the damages were so inadequate as to warrant the court granting a new trial. In the course of the argument Lord Justice SCRUTTON recalled a case where a man who had lost his leg by an accident was given by the jury £150 as special damage and one farthing as general damages! Such a verdict obviously could not be allowed to stand. Verdicts such as these weaken one's admiration for the jury in civil actions, and account for the greater prevalence of trial by judge alone, save in those cases where the sympathy of the twelve members of the jury are counted on to give substantial damages which can rarely be set aside as excessive.

Housing and Slum Clearance: Ministry of Health Report.

THE recently issued Fifteenth Annual Report of the Ministry (H.M. Stationery Office, Cmd. 4664) indicates the progress which has been made with regard to the provision of working-class dwellings during the year ended 31st March, 1934. The Exchequer subsidies, which were payable under the Housing (Financial Provisions) Act, 1924, and had been the mainstay of the activity of local authorities in the provision of additional working-class accommodation, were discontinued by the Housing (Financial Provisions) Act, 1933, s. 1, it being considered that the withdrawal of the subsidy would encourage the tendency evinced by private enterprise to enter the field of working-class housing by eliminating the competition of subsidised municipal building. Another factor, the Report points out, in the same direction is the recent extension of s. 92 of the Housing Act, 1925, which enables local authorities to guarantee advances by building societies so as to provide an additional supply of finance on easy terms for builders and investors requiring it for the provision of houses to let. The response to a circular of 6th April, 1933, asking local authorities to submit programmes of the action to be taken by them under the Housing Act, 1930, is indicated by the fact that 1,679 programmes or nil returns, of which 1,467 had been provisionally accepted, had been received by 31st March, 1934. These programmes provide for the demolition of 268,457 houses with a population of 1,246,556 and for the erection of 286,397 replacement dwellings. The government's campaign against overcrowding is—the report states—based on the principle that this condition should no longer be tolerated. A standard by which overcrowding can be measured will be necessary, followed by local surveys to ascertain where it exists and the extent of it. In addition, statutory provision must secure the prevention of future overcrowding both in places where the evil has been abated and where it does not exist. In many cases of overcrowding in the congested inner areas of large cities, the problem is not solved by the provision of cottages on the outskirts. New accommodation must be provided at the centre and as the erection of tall buildings on expensive sites is necessarily more costly than outlying development, it is proposed that an Exchequer subsidy shall be made available for local authorities adopting this solution of the problem. Another proposal is to invest local authorities with powers to carry out schemes including the power compulsorily to acquire overcrowded and other properties in an area demanding a wider scheme of redevelopment than is ordinarily sufficient. During the year 491 clearance orders and 114 compulsory purchase orders, involving respectively 45,830 and 23,844 persons, were confirmed by the Minister and approval was given to the erection of 20,829 dwellings definitely allocated to the Act of 1930. Twenty-seven improvement areas, involving the displacement of 845 persons by demolition of houses and 2,300 by the abatement of overcrowding—were declared by seventeen local authorities and the number of houses demolished under individual demolition orders during the same period amounted to 4,865, these being in addition to the 1,201 houses demolished as a result of preliminary action in anticipation of a formal order.

The results of two appeals to the High Court from the Minister's decision to confirm clearance orders will be best indicated by the following words of the Report: "(1) (*a*) The Court is not a Court of Appeal from the conclusions of inspectors appointed to hold local inquiries. Provided that an inquiry was held and there is evidence upon which the inspector can come to the conclusion which he does the Court cannot interfere. (*b*) A building in an area, though not itself insanitary or in a bad state of repair, may properly be included in a clearance area if its situation and arrangement is such that, combined with other buildings which surround or are near it, it becomes a danger to the health of the people living in the neighbourhood or area. (2) Premises could be properly included in a clearance order made under the Housing Act, 1930, notwithstanding that such premises had been included in an improvement scheme made under the earlier Housing Acts. The improvement scheme in this case could not be proceeded with because the local authority had failed to complete compulsory acquisition of the land within three years of confirmation of the scheme. This decision was upheld in the Court of Appeal, where the matter was taken at the instance of the property owner." It has only been possible to touch upon the chief features of this part of the Report, the section relating to housing covering over twenty pages and containing other important matter with which it has not been possible to deal.

Imprisonment of Defaulters.

THE result of the deliberations of the Departmental Committee on Imprisonment by Courts of Summary Jurisdiction in Default of Payment of Fines and Other Sums of Money, appointed on 23rd June, 1933, by the Home Secretary to act under the chairmanship of Sir John Fischer Williams, C.B.E., K.C., is now embodied in a Blue Book (Cmd.4649) issued on 24th July. The terms of reference were "to review the existing laws relating to the enforcement of fines imposed by Courts of Summary Jurisdiction and to the enforcement of wife maintenance and affiliation orders and of payment of rates, and to consider whether by changes in the law or in the methods of administration it is possible to reduce the number of imprisonments in default of payment, due regard being given to the importance of securing compliance with orders made by the courts."

Of a total of 53,150 imprisonments for all causes in 1932 more than one-third, 20,416, or 38 per cent., fall within the scope of the inquiry. The number of courts, the Report states, which between them impose the terms of imprisonment, are 1,044. Apart from the Metropolitan Police Court Stipendiary Magistrates and eighteen professional magistrates in the rest of the country, the courts are presided over by lay magistrates. The Clerk to the Justices in most places receives a lump sum allowance and in the majority of cases the more he spends on books, forms and postages (e.g., for notification of defaulters and acceptance of payments by instalments) the less is his remuneration. The Committee recommends that consideration be given to the question of payment of the Clerk's remuneration in two separate parts, one for personal remuneration and the second for expenses.

The division of defaulters into those who cannot and those who will not pay, the Report condemns as impracticable. Courts find it difficult or impossible to discover ability to pay at the time of conviction, and where a fine is imposed with imprisonment in default of payment the mind of the court may not be specifically directed to the question of the desirability of imprisonment. Moreover, many would pay if the fine or rate were levied by weekly instalments or if the weekly payments under affiliation or maintenance orders were more easily adjusted to changed circumstances.

Of offenders of all kinds punished by police courts in 1932, 78 per cent. were fined, the total number being 437,834. Of these 2·6 per cent., or 11,244, were sent to prison for failing to pay their fines.

Under the Criminal Justice Administration Act, 1914, Courts of Summary Jurisdiction were compelled, when fines were imposed on poor defendants, to grant time to pay, except where there were good reasons to the contrary, and even to allow payments by instalments on the application of the offender. The Act resulted in an immediate and heavy reduction of imprisonments.

The general practice of fixing the term as well as the fine at the time of conviction is only justified, the Report says, where the court, although allowing the option of a

fine, contemplates imprisonment as the normal and natural result. Where, however, the court has principally in view the infliction of a fine, and not imprisonment, the Report suggests that the question of imprisonment might well receive further consideration before it is inflicted in default of payment of a fine. Adjudication of imprisonment in default should be made at the time of the imposition of a fine only in cases where the penalty in default is detention in police cells, or at a police station, or within the court precincts, or where the court certifies that having regard to the character of the offence of the offender there is no reason why the offender should again be brought before the court in case of failure to pay.

The Committee also recommend that short periods of one day's detention in the precincts of the court or in a police station should be the only penalty for default in payment of fines of 5s. or under, to be imposed either at the time of conviction or subsequently. Power to order detention in uncertified cells for a maximum period of forty-eight hours should also be given. Freer use should be made of the power to place offenders under supervision, and no person under twenty-one should be committed unless the court certifies that the method of supervision has been unsuccessfully tried or that there are special circumstances rendering it undesirable. The power should also be enlarged to cover persons over twenty-one.

The amounts payable under wife maintenance and affiliation orders should be fixed having regard to the age, means, circumstances and earning capacity of each of the parties. The court should order payments to be made to the collecting officer of the court in every case, unless the applicant objects to such an arrangement, and satisfies the court that there are good grounds for his objection. The collecting officer should be paid by a fixed salary or allowance, and not by commission, as at present. Courts should also be given power to vary the amount of an order upon an application for the enforcement of arrears, after giving both parties an opportunity to be heard.

Fresh evidence should not be necessary, it is urged, for a variation of the amount payable, and the time for appeal in affiliation cases should be extended from fourteen days to six months. In the event of the complainant being convicted of perjury, or subornation of perjury, the court convicting, or the court charged with the enforcement of the order, should have power upon the application of the putative father, to annul the adjudication of paternity.

No person defaulting in payment of rates should be committed to prison until he has been brought personally by summons, or, if that fails, on warrant before the court and given an opportunity to explain his default. Where rates are payable by quarterly instalments, a defaulter should not be liable to a term of imprisonment in respect of each instalment. The law concerning the payment of rates by owners (compounding) should be amended to include within its scope the bulk of weekly tenancies and any such legislation should be compulsory on all local authorities.

It is added that Courts of Summary Jurisdiction should have at their disposal the services of an investigating officer to conduct inquiries as to the means of the parties and other matters. The courts should also have power to order the sale of a defaulter's property, as well as to examine a defaulter on oath as to his property and to compel his attendance for that purpose.

The last suggestions are probably as far-reaching and practical as any contained in the Report. If the work of the Committee can be criticised on the ground that it errs on the side of leniency towards persons who pay the penalty of improvidence, the increased facilities given to courts to sort out the sheep from the lambs ought to go far towards remedying an admittedly unfortunate state of affairs. It only remains to be said that in view of the fact that 4,041 persons in 1932 were committed to prison for debt by county courts (Civil Judicial Statistics for 1932) the urgent problem of imprisonment for civil debt should be considered as soon as possible.

Company Law and Practice.

Contracts Constituted by the Articles of Association —I.

I AM proposing to discuss to-day the question of the effect of the articles of association of a company as constituting a contract or contracts between the several parties who may be concerned, i.e., the company, the shareholders and persons dealing with the company. It can, perhaps, be most conveniently analysed by considering the contractual effect of the articles under three headings, viz., how far they are binding :—

(1) As between the company and its members *qua* members ;

(2) As between the members *inter se* ;

(3) As between the company and outsiders, in which expression are included members of the company who are in a particular transaction with the company acting in a capacity other than that of member.

Actually, it is with this very last point that I am more especially concerned, as I anticipate that what I am going to say under the other headings will be a matter of fairly common knowledge to my readers ; still I think that from the point of view of completeness and convenience it will not be a waste of time to sketch briefly the whole position.

Section 20 (1), Companies Act, 1929, is a suitable starting point. "Subject to the provisions of this Act the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member and contained covenants on the part of each member to observe all the provisions of the memorandum and articles." A similar provision is to be found in the earlier Companies Acts, and the parallel sections have been the subject of judicial decisions and *dicta*, all of which are not in harmony. I do not think that for our present purposes it is worth while going through all these (though several of them will be mentioned incidentally in what follows), but for those who are interested they are collected and considered by Astbury, J., in *Hickman* v. *Kent or Romney Marsh Sheep Breeders' Association* [1915] 1 Ch. 881.

To consider then the position under our first heading—how far are the articles of association binding as between the company and its members ? It will be noted that s. 20 (1) of the Act does not say the articles are absolutely binding on the members and enforceable at the instance of the company, but that they are binding as if the members had covenanted under seal to observe them. It is fairly clear, however—if not from the section itself—that the effect is to create enforceable obligations binding the members in their dealings with the company. It is on this footing, for example, that a company is entitled as against its members to enforce and restrain breaches of its regulations, e.g., to enforce rights of forfeiture of, or lien on, shares. The practical desirability of a shareholder acquainting himself with the provisions of the articles needs no emphasis ; as Lord Selborne said in *Oakbank Oil Company* v. *Crum*, 8 App. Cas. 65, at pp. 70–71 : "Each party must be taken to have made himself acquainted with the terms of the written contract contained in the articles of association . . . He must also in law be taken (though that is sometimes different from what the fact may be) to have understood the terms of the contract according to their proper meaning ; and that being so he must take the consequences, whatever they may be, of the contract which he has made."

Conversely, the effect of s. 20 (1) of the Act is to bind the company to the members to conform to the articles, though here, again, the phraseology of the section is not entirely explicit ; it undoubtedly says that the company is to be bound, but it does not say to whom, nor that the company is to be taken to have covenanted under seal to observe the provisions of the articles. However, as Astbury, J., in

Hickman v. *Kent or Romney Marsh Sheep Breeders' Association, supra,* remarks, "the section cannot mean that the company is not to be bound when it says it is to be bound," adding that "much of the difficulty is removed if the company be regarded, as the framers of the section may very well have so regarded it, as being treated in law as a party to its own memorandum and articles." And that the obligations prescribed by the articles are binding on the company at the instance of members appears when we consider that shareholders are entitled as against the company to enforce and restrain breaches of its regulations, e.g., to set aside a purported forfeiture of shares on the ground that the preliminary notice required by the articles to be served demanding payment of the unpaid call and interest does not comply with "the provisions of the contract between the company and the shareholders which is contained in the regulations" (*Johnson* v. *Lyttle's Iron Agency,* 5 Ch. D. 687); or to enforce in accordance with the articles the right to a share certificate.

These obligations of the company under the articles are to the members in their capacity as shareholders and in respect of their ordinary rights as shareholders, and are enforceable by them as such; the position where the articles confer a right on a person who is a member, but to whom that right is given in some capacity other than that of a member, e.g., as director or promoter, falls under our third heading and will be considered later. It need perhaps scarcely be added that the contractual rights and liabilities of both the company and the members will flow from the articles, not only as originally framed, but also as duly altered.

So much for the first of our three headings; the next point for consideration is how far the articles of association are binding as between the members *inter se.* It would seem to follow from s. 20 (1) of the Act and the ordinary law of contract that as each member is in the eyes of the law a party to a contract under seal, each member can sue and be sued for the enforcement of the provisions of that contract. Thus, in *Wood* v. *Odessa Waterworks Company,* 42 Ch. D. 636, at p. 642, Stirling, J., says: "The articles of association constitute a contract not merely between the shareholders and the company, but between each individual shareholder and every other"; and there are *dicta* in other cases to the same effect. Though this is so, it seems clear that the obligations arising from the articles which are owed to and by members *inter se* are properly enforceable by the company and not by the individual shareholder; for in accordance with what is sometimes known as the rule in *Foss* v. *Harbottle,* 2 Ha. 461, it is for the company and not for the individual shareholder or shareholders, except in especial circumstances, to sue for a breach of the articles. As James, L.J., said in *MacDougall* v. *Gardiner,* 1 Ch. D. 13, at p. 21: "Nothing connected with internal disputes between the shareholders is to be made the subject of a bill by some one shareholder on behalf of himself and others, unless there be something illegal, oppressive or fraudulent—unless there is something *ultra vires* on the part of the company *qua* company, or on the part of the majority of the company so that they are not fit persons to determine it; but every litigation must be in the name of the company, if the company really desire it." The reason given is that it is for the majority to complain if they wish, and it is open to a majority to put right any irregularity without any resort being had to litigation; and I think it might be added that the matter concerns the mutual rights and obligations of members *qua* members and not in other capacities, and it is consonant with this that the company (except in those especial cases where the majority is abusing its powers) should be the proper person to enforce those rights and obligations.

I do not think I can do better than quote the words of Lord Herschell in *Welton* v. *Saffery* [1897] A.C. 299, at p. 315, as summing up the effect of the articles on members *inter se*; after referring to s. 16 of the 1862 Act (the equivalent of s. 20 (1) of the present Act), he says: "The articles thus become, in effect, a contract under seal by each member of the company, and regulate his rights. They cannot, of course, diminish or affect any liability created by the express terms of the statute; but . . . the statute does not purport to settle the rights of the members *inter se,* it leaves these to be determined by the articles (or the articles and memorandum together), which are the social contract regulating these rights. I think it was intended to permit perfect freedom in this respect. It is quite true that the articles constitute a contract between each member and the company, and that there is no contract in terms between the individual members of the company; but the articles do not any the less, in my opinion, regulate their rights *inter se.* Such rights can only be enforced by or against a member through the company, or through the liquidator representing the company; but I think that no member has, as between himself and another member, any right beyond that which the contract with the company gives."

I hope to conclude this topic next week by considering the position of outsiders who claim under a contract contained in the articles of a company.

A Conveyancer's Diary.

Effect of Payment of Charges by Limited Owner.

It is always interesting to find a modern case which has no relation to the "new" Law of Property, but yet is not covered by authority.

Such a case is *Re Chesters; Whittingham* v. *Chesters* [1934] W.N. 174.

In 1912 a testator created a mortgage of certain freehold property. By his will, dated in 1895, he devised his freehold property to trustees upon trust for his wife for life, with remainder to the use of his son during his life with remainders over. He also devised his residuary estate to his son. The testator died in July, 1927.

In December, 1927, the son, being at that time tenant for life in remainder, paid off the mortgage. The testator's widow died in 1931, and his son died in 1933.

A summons was taken out by the personal representative of the testator for the determination of the question whether the plaintiff ought to pay to the personal representative of the son, out of the proceeds of sale of the property the subject of the mortgage, the sum paid by the son in discharge of the mortgage or whether the payment off by the son must be deemed to be for the benefit of the inheritance.

Curiously enough, this is a question which has never been decided.

There are many cases regarding the rights of a limited owner to have a mortgage kept alive for his benefit where he has discharged it out of his own pocket, but it does not seem ever to have been decided whether that right applied to a tenant for life in remainder.

Thus, in *Wyndham* v. *Egremont* (1775), Amb. 753, where a tenant for life in possession became entitled to a charge upon the estate and died intestate, it was held that the charge should go to his next-of-kin, as personalty, and not be considered as merged for the benefit of his heir to whom the estate descended.

In the case of a tenant in tail, however, the case was different, although the merger was only a matter of presumption which could be rebutted by evidence or by the circumstances.

Where a charge is paid off by a tenant in tail, the presumption arises that he intended to merge the charge because he was, when he paid it off, in a position to make the property his own by executing a disentailing assurance.

There may, however, be circumstances (apart from direct evidence of intention) which rebut the presumption.

Ware v. *Polhill* (1805), 11 Ves. 257, is an illustration of that. That was a case where a charge had been paid off by an order

of court out of the income of a tenant in tail who was an infant. The circumstance of the infancy was held to rebut any presumption of an intention that the charge should merge.

Lord Eldon, C., said: "If a tenant in tail adult pays off a mortgage or becomes entitled to a charge, as he might acquire the absolute ownership, a presumption arises that his intention was not to keep alive the charge. But that principle does not apply during infancy. I have made it a rule where property of one nature has been applied for the benefit of an infant to property of another nature, to have an express provision that if he shall not attain the age at which he will have a disposable power, the representative shall not be prejudiced by the act done by the court in contemplation of the infant's benefit."

I take that to mean that even though it be under an order of court where a mortgage or charge is paid off out of the income or capital of an infant, the presumption which might arise of an intention to merge the mortgage or charge in the case of an adult is rebutted by the circumstances, in that case the circumstance of infancy.

It remains, however, to be considered what might be the position of limited owners in remainder. The leading case upon that is *Wigsell* v. *Wigsell* (1825), 2 Sim. & St. 364. In that case a tenant in tail in remainder paid off a mortgage upon the estate during the life of the tenant for life, and took an assignment of the mortgage term. He afterwards came into possession of the estate and died without issue. It was held that the mortgage was a subsisting charge for the benefit of his personal estate, there being nothing to show a contrary intention. Sir John Leach, V.-C., said: "Where a tenant in tail in possession pays off a mortgage and declares no intention that the charge shall continue for the benefit of the personal estate, there the charge ceases; because the estate is considered as his own, inasmuch as he may make it his own by suffering a recovery. This principle has no application to a tenant in tail in remainder whose estate may be altogether defeated by the birth of another person, and it must be inferred that such a tenant in tail means to keep the charge alive."

It therefore appears that so far as regards a tenant in tail in remainder the payment off of a mortgage or charge is not to be regarded as a payment for the benefit of those who may become entitled to the estate, but *primâ facie* will be kept alive for the benefit of his personal estate.

It has never yet, however, been held to be so in the case of a tenant for life in remainder.

That was the point in *Re Chesters*. Bennett, J., in the course of his judgment in that case said that there appeared to be very little authority as to what was the presumption in the case of a tenant for life in remainder paying off a charge on the estate. His lordship then referred to *Wigsell* v. *Wigsell*, and said that under that authority a charge paid off by a tenant in tail in remainder could be kept alive and the learned judge considered that would apply *a fortiori* in the case of a tenant for life in remainder.

His lordship added that no distinction was to be drawn between a tenant for life in possession and a tenant for life in remainder, and the presumption was that the charge was to be kept alive. In that case there was no evidence to rebut the presumption, and consequently the son's personal representatives were entitled to be refunded the amount which the son had paid in discharge of the mortgage.

EVENING LAW CLASSES.

The new session of evening law classes at the North-Western Polytechnic commences on Monday, 24th September. The lecturers will be Mr. W. H. Gunn, LL.B., Mr. W. E. Wilkinson, LL.D., and Mr. H. S. Ruttle, LL.D., B.A. The syllabus of the courses and full details of classes are given in the prospectus, copies of which may be obtained on application to the Secretary, North-Western Polytechnic, Prince of Wales-road, N.W.5.

Landlord and Tenant Notebook.

Intestacy of Tenant.

On the death of a tenant intestate, his landlord may find himself confronted with a tiresome problem if no one comes forward to take out letters of administration. The smaller the estate—in both senses—the less likely is it that any relative will apply for a grant, and the more out of proportion is the trouble to the landlord of seeking a grant himself. Meanwhile, the estate of the deceased is vested in the President of the Probate, Divorce and Admiralty Division of the High Court (A.E.A., 1925, s. 9), but this arrangement is devised, I believe, to secure the protection of the property, i.e., to enable the prosecution to lay the property in someone if it should be stolen. I have never heard of a landlord serving the President with, say, a week's notice to quit premises he (the President) had never heard of; and, frankly, I cannot say either way whether such a procedure would be the correct way of determining a tenancy.

What does happen and has happened in these cases, is that the wife or husband or son or daughter of the tenant behaves as if he or she were the tenant, and in these cases the courts have been very liberal in applying the doctrine of estoppel, and the principle that possession is to be referred to a rightful title if possible. In *Doe d. Batten* v. *Murless* (1817), 6 M. & S. 110, the lease (for three lives) had been granted to the defendant's father, who died leaving no will, whereupon another son had taken out letters of administration; on the latter's death the defendant had entered, but the only evidence of his title was that he had once, when mortgaging other property, described himself as legal personal representative of his late brother. It was held that possession was *primâ facie* evidence that the interest in the term was vested in him.

The doctrine can, indeed, be invoked to prove an assignment *inter vivos*; in *Doe d. Morris* v. *Williams* (1826), 6 B. & C. 41, the defendant, let in to defend, was the original tenant under a periodic tenancy, but had never paid rent, had left the premises, and his son-in-law had then occupied them, but had also failed to pay rent. Notice to quit was given to the son-in-law, and the tenant complained that it should have been served on him. Here it was again held that there was a presumption in favour of assignment which could, of course, be rebutted, e.g., by showing that the son-in-law had paid rent to the father-in-law.

Rees d. Mears v. *Perrott* (1830), 4 C. & P. 230, was a case of a widow on whom notice to quit was served; she was in possession, produced nothing to show that anyone else was the deceased tenant's personal representative, and judgment was given against her.

It is sometimes said in these cases that the defendant is an executor *de son tort*, and the arguments and some of the judgments in *Williams* v. *Heales* (1874), L.R. 9, C.P. 177, proceeded largely on these lines, but it is of interest to note that one judgment says that that is not the real question. The action was for rent and for damages for breaches of a covenant to repair contained in a sixty-one-and-a-quarter year underlease, the plaintiffs being assignees of the eighty-year head lease. The original under-tenant died intestate in 1810, but his widow had taken a grant of letters of administration and paid ground rent and received rents from sub-undertenants. She died, also leaving no will, in 1843. A son-in-law then took possession, and on his dying intestate in 1856, his son, the defendant in the action, took over. The issue was decided by reference to estoppel, which is a rule of evidence; the defendant could not be heard to say that he was not an assignee of the underlease. This is, of course, a very striking illustration of the rule, for there had been two intestacies without administration, and the defendant was a grandson of the last administratrix.

To conclude with a case that went the other way: in *Stratford-on-Avon Corporation* v. *Parker* [1914] 2 K.B. 562,

the claim was for damages for failure to repair, in breach of a covenant contained in a lease granted in 1814. The defendant's mother was the last known tenant, and the plaintiffs were surprised, when sending a dilapidations notice in 1912, to receive in reply a letter from a firm of solicitors, acting for the defendant, advising them of Mrs. Parker's death in 1910. The letter added that the defendant repudiated liability for non-repair. The plaintiffs had, before and since 1910, received ground rent paid by the defendant as agent for his mother. He had collected rents for his mother till her death, and since then had collected and handed them to his sister till her death, and since then had collected and retained them for anyone who might be entitled to them. The corporation, after a month or two, wrote and claimed that intermeddling had made the defendant liable, and asking for authority to take possession. The answer was that as he had never had possession, he had no authority to give, but entertained no objection to the plaintiffs' taking possession. Which they did. In the action they relied on estoppel, and on the argument that the defendant was executor *de son tort*, and cited *Williams* v. *Heales*, *supra*, in support of their contentions; but, as the court pointed out, that authority actually went a long way to support those of the defendant. For there could be no estoppel, the defendant having paid ground rent as agent; and if he were an executor *de son tort*, that gave him no title, no privileges, and while it meant he had the liabilities of an ordinary executor, there was no privity of estate.

Our County Court Letter.

THE CONSTITUTION OF CONSTRUCTIVE TRUSTS.

In a recent case at Merthyr Tydfil County Court (*Murphy* v. *Murphy*) the claim was for the execution of a trust, under the County Courts Act, 1888, s. 67 (2). The plaintiff's case was that (1) having lost a leg in an accident, he had been paid £650, which was deposited in a bank in the joint names of himself and his brother—the defendant; (2) between March, 1932, and April, 1934, the sum of £350 was withdrawn and handed to the defendant for safe custody and disbursement on behalf of the plaintiff; (3) a total of £130 16s. was admittedly due to the defendant for the plaintiff's board and lodging for 109 weeks, but the plaintiff was entitled to the balance. The defendant's case was that (1) the money withdrawn from the bank was not placed in his custody, and he had not constituted himself a trustee; (2) the money was, in fact, retained by the plaintiff, who had paid for his own board and lodging thereout at the rate of £1 4s. a week. His Honour Judge Thomas held that there was no evidence of the creation of any trust, and judgment was given for the defendant, with costs.

THE CONTRACTUAL POWERS OF SHOP ASSISTANTS.

In the recent case of *Younger Publicity Service, Ltd.* v. *Eckersley* at Westminster County Court, the claim was for £10 8s. as the price of a theatrical advertisement, in pursuance of a written agreement. The defendant's case was that (1) the paper was signed (in her millinery and gown shop at Blackpool) by an assistant, who occasionally helped with letters, but had no authority to make contracts; (2) the defendant, having arrived before the departure of the plaintiffs' traveller, had said: "He (the assistant) has no right to sign any contract for me, and I repudiate anything he has done." Corroborative evidence was given by the assistant, who had written cancelling the order, his explanation being that he had been induced to sign on the representation that the defendant had already authorised the traveller to photograph the shop, and prepare an advertisement film. His Honour Judge Dumas held that there was no case against the defendant, and judgment was given in her favour, with costs, including travelling expenses (£1 15s. each) for herself and her assistant.

APPEAL WITHOUT LEAVE FROM COUNTY COURT.

A novel situation recently confronted a Divisional Court (Mr. Justice Humphreys and Mr. Justice Macnaghten) in *Paul* v. *Goodman*. The appellant had sued the Official Receiver of Devonport for £3 16s., but His Honour Judge Lias (at Tavistock County Court) had given judgment for the defendant. The grounds of appeal were that the county court judge was wrong in refusing to let the appellant give evidence, and state his case to the jury. Mr. Justice Humphreys observed that the amount was under £20, and he could not understand how the case came before the Divisional Court, unless it was an appeal from a refusal to grant a new trial. It afterwards transpired (as a result of telephonic communications with Tavistock and Plymouth) that there was no record of any application for leave to appeal, nor had the court officials any recollection of such an application. Mr. Justice Humphreys therefore pointed out that (1) the appellant was not rightly before the court, unless the county court judge had given leave to appeal; (2) the case would be adjourned, in order that the Solicitor to the Board of Trade might ascertain whether such leave was given; (3) if leave had not been given, the respondent should apply for the appeal to be struck out. The appeal was finally dismissed two days later. The rarity of the above occurrence doubtless accounts for the difficulty of finding any guidance (in such an emergency) in the recognised authorities on practice and procedure.

Obituary.

LORD JUSTICE SCRUTTON.

The Right Hon. Sir Thomas Edward Scrutton, a Lord Justice of Appeal, died in a nursing home at Norwich on Saturday, 18th August, at the age of seventy-seven. Educated at Mill Hill School, University College, London, and Trinity College, Cambridge, he was called to the Bar by the Middle Temple in 1882. Taking silk in 1901, he became a Bencher of his Inn in 1908, and in 1910 he was appointed a Judge of the King's Bench Division. He was appointed a Lord Justice of Appeal in 1916. An appreciation appears at p. 589 of this issue.

Mr. S. R. GINN.

Mr. Samuel Reuben Ginn, solicitor, senior partner in the firm of Messrs. Ginn & Co., of Cambridge, died on Sunday, 12th August. Mr. Ginn, who was admitted a solicitor in 1873, had been Clerk to the Cambridgeshire County Council, Clerk to the Lord-Lieutenancy, and Clerk of the Peace for the county. He was elected to the Cambridge Town Council in 1891, and was Mayor of the borough from 1897 to 1898.

Mr. G. R. MALKIN.

Mr. George Robert Malkin, solicitor, partner in the firm of Messrs. Malkin, Curtis & Co., of Martin's-lane, E.C., and of Reigate, died on Sunday, 19th August. Mr. Malkin was admitted a solicitor in 1887.

Mr. E. S. RICHARDS.

Mr. Edward Stuart Richards, solicitor, senior partner in the firm of Messrs. Richards, Butler, Stokes & Woodham Smith, of Leadenhall-street, E.C., died on Wednesday, 8th August, at the age of forty-eight. Mr. Richards, who was admitted a solicitor in 1909, was also a member of the Baltic Exchange.

Mr. W. WATKINS.

Mr. William Watkins, solicitor, of Newtown, died on Wednesday, 8th August. Mr. Watkins, who was admitted a solicitor in 1885, had been County Court Registrar for Newtown district, and was trustee and a vice-president of Montgomery County Infirmary.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31 Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Income Tax Return—Deduction of Interest on Estate Duty.

Q. 3015. Interest on estate duty has been paid in respect of real estate of which A is tenant for life under a strict settlement created by the will of his father, who died in 1931. The settlement comprises personal estate as well as real estate. (1) For the purpose of ascertaining the amount of income which A should return for income tax purposes, can the interest on the estate duty so paid be deducted from the gross income receivable by A from the settlement? (2) If the interest can be deducted, should the amount deducted be the actual sum paid to the revenue or should it be "grossed up" by the amount of income tax, i.e., if the actual amount paid as interest in 1933/34 was £300, can this be "grossed up" by tax at 5s. in the £ thereby increasing the amount to £400? (3) If the interest cannot be "grossed up" as above, and therefore, the amount paid to the Revenue has not suffered income tax, can the tenant for life claim repayment of income tax in respect of the interest on the analogy of interest on bank loans?

A. Although it seems quite unfair that deduction of such interest should not be allowed, the House of Lords has held that it cannot be deducted against income from investments in respect of which the duty is assessed (*Inverclyde Trustees* v. *I.R.C.* [1924] A.C. 580) and the decision must equally apply to interest on duty in respect of real estate. For sur-tax purposes however such a deduction is allowed, the interest being "grossed" as if the amount paid were after deduction of tax.

The Sale of Religious Books.

Q. 3016. Many years ago the business of a "church depot" was formed, being mainly concerned with the purchase and sale to the public for profit of bibles, prayer books and religious works generally. It is not now known by whom or in what manner the business was commenced, but for a considerable time it has been carried on by managers and supervised by a committee consisting of clergymen. The profits earned have been accumulating year by year until they have now produced a substantial sum which is invested in the joint names of two members of the committee. There is no trust deed, nor indeed any permanent record relating to the business in existence, but it is abundantly clear that the business is being conducted by trustees for the benefit of the diocese. We are instructed to advise what steps (if any) can be taken to place the business on a proper footing.

(1) Do the Pluralities Act, 1838, and the Trading Partnerships Act, 1841, apply in the case of a business carried on by trustees so as to preclude a clergyman from taking an active part therein?

(2) If the business is in fact being carried on illegally, will it be proper to prepare a trust deed transferring the trust investments into the names of appointed trustees who are not clergymen, and declaring the trusts upon which they will carry on the business? If so, how much control over the trustees may legally be exercised by the general committee?

(3) As a clergyman may not be a director, can any advantage be derived by the formation of a private company?

A. (1) The fact that a business is carried on by trustees would not exclude the operation of the Pluralities Act, 1838, s. 29 (which prohibits a spiritual person from engaging in trade), nor would that fact enable a spiritual person to act as a director, as this would be contrary to the Trading Partnerships Act, 1841, s. 1. Neither statute would prevent a committee of clergymen from acting as an advisory board (even in a supervising capacity) which appears to have been the case in the circumstances described in the question.

(2) The business is therefore not being carried on illegally, but should be placed on a more definite basis. A trust deed does not appear to be the most suitable method of regulating the business, and an application should be made to the Board of Trade for a licence to register the business (as an "association not for profit") under the Companies Act, 1929, s. 18. The use of the word "Limited" will then be dispensed with, but the advantages of incorporation (including limited liability) will be obtained.

(3) Although a clergyman cannot be a director, the formation of a company (under the above conditions) would confer the advantage of a corporate name, the vesting of the property in a permanent legal entity, and the ability to make contracts in the name of the society. The application for a licence (explaining the circumstances) should be made to the Comptroller of the Companies Department, Board of Trade, Great George-street, Westminster, London, S.W.1.

Mortgage by Company—Certificate of Registration.

Q. 3017. Although it arises daily, we have not been able to find any authoritative answer to the following question. Where a limited company executes a mortgage of freehold or leasehold property, must a copy of the certificate given under s. 82 (2) of the Companies Act, 1929 by the Registrar of Companies be endorsed on the mortgage pursuant to the provisions of s. 83 of the same Act? We are referring only to mortgages of freehold or leasehold properties in common form, and not to documents commonly known as debentures. We believe that it is not the common practice to endorse a copy of the certificate on such mortgages, but that the practice is to annex the certificate itself to the mortgage. This may satisfy the policy of the Companies Act, but does not appear to be in accordance with its literal requirements. We cannot see why a copy of the certificate should not be endorsed on the mortgage, as clearly seems to be required by the Act. Another question arises in the case of registered land. Is a copy of the registrar's certificate to be endorsed on the original charge, or on the copy which is bound up with the charge certificate?

A. Section 82 of the Companies Act, 1929, provides for the giving by the registrar of a certificate of every charge requiring to be registered, but s. 83 only requires endorsement on debentures and certificates of debenture stock. It is true that "debenture" is defined in s. 380 as including "any other securities" which in the literal sense of the words would comprise any mortgages, but as a matter of practice (and as far as we know of practice only) it is not considered necessary to endorse a copy of the certificate on an ordinary mortgage of real or leasehold property. The non-endorsement does not affect its validity, and so long as the authorities do not consider it necessary to test the question by proceeding for penalties for non-endorsement, there can be no harm done by omitting such endorsement. On registration of a charge by a company of registered land the practice is to register the charge at the Companies Registry first and

produce certificate. The registrar of the Land Registry can register without production, but in that case an entry is made that it is subject to the provisions of s. 79 of the Companies Act (r. 145).

Liability for Rent of Show-case.

Q. 3018. A granted to B a right to instal a show-case (containing a map and advertisements) on the outside wall of A's premises, at a yearly rent payable quarterly on 1st March, June, September and December, for a term of years which expired on 30th November, 1933. B has paid the rent up to the last-mentioned date, but has not removed his show-case or paid the rent, notwithstanding applications either to pay further rent for the same or to unfix and remove the case and make good the damage entailed by its removal. The agreement provided that B should remove the show-case at the termination of the agreement. As B has refused to pay the rental as from the end of the term, there is no implied agreement between the parties for an extension of B's tenancy of, or licence to use, A's wall. Can A sue for damages for B's use and occupation of the wall space, and would the measure of such damage be the rental previously paid? It would be possible for A to take down the show-case and make good the damage caused in so doing. Does this affect the position?

A. From the particulars supplied of the agreement between A and B, it appears that there was no demise or lease, and that the relationship of landlord and tenant was not created. In other words, the agreement created a mere licence to use the wall of A's premises. The action for use and occupation, however, is only appropriate to the case of a tenant holding over, after the expiration of a lease. There is no similar cause of action arising on the expiration of a licence, and the first question is therefore answered in the negative. A should remove the show-case (and make good the damage) and then sue B for damages for breach of the agreement to remove the show-case at the termination of the agreement. A must hand over the show-case, if required, to B. See *Rendell* v. *Roman* (1893), 9 T.L.R. 192, unless the High Bailiff seizes it by way of execution in A's action against B. As to the document being only a licence, see *Wilson* v. *Tavener* [1901] 1 Ch. 578.

The Landlord and Tenant Act, 1927.

Q. 3019. X. & Co., auctioneers, estate agents and valuers, are lessees of certain premises under a twenty-one years' lease, expiring May, 1935. The premises are near a cattle market, and accordingly, specially suitable for X. & Co.'s business. They have served notice under the L.T.A., 1927, requiring a new lease on the ground that money compensation would not be adequate to compensate them for loss of goodwill which has attached to the premises by reason of their occupancy. They let off the upstairs of the premises at nearly sufficient to cover their own rent. The landlords also own large premises in the rear of the premises occupied by X. & Co., which premises in the rear have only a small separate alleyway entrance. The landlords reply that they cannot grant a new lease as (1) they wish to dispose of the whole of the property including the large premises in the rear, and that a purchaser would require possession or control of the front portion, and that the premises at the rear are very much more valuable if considered as a whole with the front portion (as is very probably the case), (2) they are satisfied that the property in X. & Co.'s occupation would command a very much higher rent for a purpose other than that of the trade or business carried on by X. & Co., and (3) generally on other grounds they will not grant a new lease. X. & Co. argue that they have been at the premises so long that their trade or business has added a goodwill value to the premises, and that, being so near the local market, they will suffer a severe loss if they are compelled to move.

(1) Would the landlords succeed in defeating the claim for a new lease by reason of their proposals on the grounds of the "Good estate management clause," under the L.T.A., or otherwise?

(2) Is there any defined means of ascertaining whether a goodwill value has become attached to the premises. Obviously any person of similar business taking the premises would get the benefit of casual callers at least.

(3) Is X. & Co.'s business as above mentioned a "trade or business" within the Act?

(4) Generally, could you give any opinion as to X. & Co.'s chance of success in an application to the court?

A. (1) The questioners concede that the landlords are probably right in one contention, viz., that the premises at the rear are more valuable, if considered as a whole, with the front portion. The landlords would, therefore, succeed in defeating the claim on the plea that "good estate management" would necessitate letting the premises as a whole, instead of letting the front portion separately to X. & Co. Section 5 (3) (*b*) (iv) would, therefore, be a good defence to a claim for a new lease.

(2) There is no defined means of ascertaining whether a goodwill value has become attached to the premises, but—even if X. & Co. succeeded on this point—they must go further and prove (as stated in s. 4) that "by reason whereof (i.e., the goodwill) the premises could be let at a higher rent than they would have realised had no such goodwill attached thereto." The landlords contend that the property would command a higher rent for a purpose other than that of the business of X. & Co., and—in that event—it would appear that the increased rental value is due to the appreciation in value of the district as a whole, and not merely to the circumstance that X. & Co. have carried on business there for twenty years.

(3) X. & Co.'s business is really a profession, and not a trade or business within the Act.

(4) X. & Co.'s chance of success, in an application to the court, is remote—especially in view of s. 17 (3) (*a*).

Oral Restrictive Covenant.

Q. 3020. A & Co. employed B as a commercial traveller in their business. B covenanted with A & Co. in his service agreement with them that he would not carry on a similar business, etc., within a certain radius for a certain period. Subsequently A & Co. form themselves into a private limited liability company, A & Co., Ltd. B continued to serve A & Co., Ltd., for some months and then gave notice of his intention to leave, intimating that he intended to carry on a similar business to that of A & Co., Ltd., within the prohibited area. His contention is that his covenant was made in favour of A & Co., who are now defunct, and that there is no privity between him and the limited company, A & Co., Ltd. There was no fresh agreement made between the parties on the formation of the company, but it seems unreasonable that the original covenant should be voided simply by reason of A & Co.'s change of status. Is B's contention correct, please?

A. On the facts stated in the question there is evidence of a novation of contract, i.e., the substitution of the company for the firm by mutual agreement between those two parties and B. The statement that "there was no fresh agreement made between the parties on the formation of the company" is only accurate to the extent that there was no fresh written agreement. An oral restrictive covenant, or one implied from the course of dealing between the parties, is valid—as shown from the decision in *Alberts & Son, Ltd.* v. *Locke*, noted in the "County Court Letter" in our issue of the 14th October, 1933 (77 Sol. J. 725). B's contention is therefore not correct, as there is privity between him and the limited company, which he has served for some months without demur.

To-day and Yesterday.

LEGAL CALENDAR.

20 AUGUST.—The case of *Rouse* v. *Fivaz*, heard before Lord Chief Justice Tindal on the 20th August, 1841, was an action to recover the amount of a bill of exchange. The defence was that the bill had been given to compound a felony. The drawer, a confidential clerk, had been charged with embezzling a large sum of money belonging to his employer, and taken into custody. However, after the employer had obtained security for the repayment of the money, the charge was dropped. After a minute's deliberation the jury found that the defendant had made out his case.

21 AUGUST.—On the 21st August, 1844, James Balaney, surgeon, was tried at the Central Criminal Court on a charge of poisoning his wife with prussic acid. It was not denied that she had taken the poison, but, according to the prisoner's story, it had been left carelessly near her bed and she had swallowed it by accident. The fact that the husband inherited her property, and that in various letters he had entirely misrepresented the course of an illness which preceded her death, cast grave suspicion on him. On the other hand, they were newly married and had always seemed a very devoted couple and the lady was very attractive. After a summing up by Mr. Baron Gurney, the jury acquitted the prisoner.

22 AUGUST.—Mr. Justice Allibond died at his house in Brownlow-street, Holborn, on the 22nd August, 1688, just in time to save himself from the Nemesis which would almost certainly have overtaken him had he survived until the Whig Revolution. He was buried at Dagenham, near the grave of his mother. Owing to the fact that he was a Roman Catholic, his appointment to the King's Bench in the previous year had not been popular.

23 AUGUST.—On the 23rd August, 1481, Sir Thomas Littleton, a Justice of the Common Pleas, died at Frankley, his Worcestershire birthplace. A figure of him in coif and robes was placed in the chancel window in the chapel of St. Leonard there. He was buried in the nave of Worcester Cathedral. He had been a judge for over fifteen years, his salary being fixed *de gratia speciali* at a hundred and ten marks a year, with an allowance of a hundred and six shillings for a furred robe at Christmas and sixty-six shillings for a linen robe at Pentecost. His book on "Tenures" has made him famous as one of our earliest legal authors.

24 AUGUST.—On the 24th August, 1830, Captains Smith and Markham were tried at Dublin for killing Standish O'Grady, a member of the Bar, in a duel. They were both found guilty of manslaughter and sentenced to twelve months' imprisonment. There were cheers in court, but Captain Smith clasped his hands to his head and cried: "Oh, God! my God! take my life, is it come to this?" Throwing himself into Markham's arms, he said: "Oh, Markham! my dear Frederick, have I brought you to this? Oh, I wish to God they would take my life! Shame and disgrace and everything else have come upon me." He then burst into tears.

25 AUGUST.—On the 25th August, 1631, Sir Nicholas Hyde, Chief Justice of the King's Bench, died of gaol fever contracted during the summer circuit.

26 AUGUST.—On the 26th August, 1667, Pepys records the rumours surrounding the fall of Lord Clarendon, and the news "how my Lord Chancellor's Seal is to be taken away from him to-day . . . The King did resolve it on Saturday and did yesterday send the Duke of Albemarle, the only man fit for those works, to him for his purse; to which the Chancellor answered that he received it from the King and would deliver it to the King's own hand . . . They all say that he is but a poor man, not worth above £3,000 a year in land; but this I cannot believe; and all do blame him for having built so great a house till he got a better estate."

THE WEEK'S PERSONALITY.

Sir Nicholas Hyde was not a great judge either in personality or appearance. His manner was reserved and cold; he was sallow and "of mean aspect," and he rode his circuits negligently dressed in a whitish-blue cloak "more like a clothier or a woolman than a Lord Chief Justice." On this account he was thought to have lowered the dignity of the Bench, but contemporaries spoke in his praise. According to Croke he was "a grave, religious, discreet man and of great learning and piety." Lord Clarendon, his nephew, said that "his justice and sincerity were so conspicuous throughout the kingdom that the death of no judge had in any time been more lamented." Whitelock said that he lived "with great wisdom and temper considering the ticklishness of the times. He would never undertake to the King, nor adventure to give him a resolute answer in any weighty business when the question was of the law, but he would pray that he might confer with his brethren." He held the office of Chief Justice for five years only, having been appointed in 1627 through the influence of the Duke of Buckingham, by whom he had been employed to prepare his defence to the articles of impeachment brought against him by the House of Commons in 1626. However, he was chosen on merit to be Chief Justice as one who "for his parts and abilities was thought worthy of that preferment."

ARMS AND THE LAW.

The Long Vacation has, as usual, seen the Inns of Court Regiment marching as to war. Its actual experience on active service is not so very remote—a fact lately emphasised when the man who commanded it during the Great War proved himself still young enough to lead a bride to the altar. For one who has taken the Church, the law and the profession of arms in his stride, Lieutenant-Colonel Errington, Chancellor of the Diocese of London, Bencher of Lincoln's Inn, is remarkably youthful. For a military record equal to the Great War, the lawyers must go back to the Civil Wars. Probably one of the most extraordinary notices of promotion to the Bench belongs to those troubled times: "That Colonel Rigby be a Baron of the Exchequer." That was in 1649. He had held a commission under the Parliament, commanded forces in Lancashire and beaten the royal troops near Thurland Castle, taking 400 prisoners including their commander, which "was the more discoursed of because Rigby was a lawyer." He also besieged Latham House and, after Marston Moor, was appointed one of the Commissioners for executing martial law.

SETTLEMENTS.

A daily paper has recently given prominence to a correspondence on the question of settling out of court, one view maintained being that delay in agreement is due to the unreasonableness and obstinacy of the law clients and the other, that settlements are reached only when it is clear that there is no money left to continue the fight. Wise advocates will always yield and settle bad cases. It was through adopting this course that the great Sir Charles Russell always appeared to be on the winning side, and the future Mr. Justice Day was known at the Bar as "Settling Day." Of course, one must know when one's case is really so very weak, unless one is to fall a victim to the sort of bluff which Serjeant Byles once successfully applied to an opponent whose strong point was advocacy and not law. Coming into court before the judge had taken his seat, he loudly instructed his clerk to have everything ready to catch the mid-day train to London. "But, Serjeant," protested his opponent, "this is a long case; it will last at least all day." "A long case!" was the reply, "it will not last long. You are going to be non-suited." And the opponent, who had a profound respect for Byles's legal knowledge, immediately advised his client to settle for a moderate sum. Byles caught his train.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Overcrowding in the Profession.

Sir,—I gather from the reported remarks of the President of The Law Society at its recent annual general meeting that the attention of that body has at length been directed to the serious overcrowding of the solicitor's branch of the legal profession.

Quite obviously, the influx of entrants has for some time past been so enormously greater than the profession can possibly assimilate that the present situation calls for immediate modification, as being fraught with great hardship to the entrants themselves and also constituting a grave danger to the profession.

It must be freely admitted that a grounding in legal principles forms a valuable part of a liberal education, and it is common knowledge that many persons read for the Bar for that reason (amongst others), with no intention of ever practising law, but I do not think this is so, to any extent, in the solicitor's branch of the profession.

What then is to become of the many disappointed persons who, after having spent time, labour and money in qualifying, only to find, too late, that the law has no living for them, nor indeed, any use for their services ?

In our own country, we know that before an ordinand can be ordained, the Church of England wisely requires that he *must* be designated by " title," for an actual and definite sphere of work which awaits him, and I read in the legal press some time ago that, in Germany, the legal authorities had definitely decided (in view of alleged professional overcrowding it was stated) that no further entrants should be permitted to the legal profession for (I think) a period of three years from a stated date, it being considered that an overcrowded profession constituted a potential danger not only to itself but also to the State.

Another consideration, I think, also emerges, in this connection, which is, that a more careful degree of selection of entrants to the profession might usefully be aimed at by our English authorities.

The solicitor's profession requires, in addition to legal knowledge and acumen, a high degree of morality and integrity, and these indispensable qualities are not necessarily always possessed by those who are capable of passing examinations creditably or even brilliantly.

One can only hope that The Law Society, and our more influential brethren generally, will eventually endeavour to deal speedily and adequately with the remedying of the evils and difficulties of the present situation and thus discharge the heavy responsibility resting on their shoulders.

Chester. " WESTERN PRACTITIONER."
15th August.

" Premises " or " Premisses."

Sir,—I think the best answer to Mr. Randle F. Holme's question in to-day's issue of THE SOLICITORS' JOURNAL about the word " premises " is to be found on p. 9, Vol. II. of " Stephen's Commentaries " (18th ed.), where the learned author states :—

> " Curiously enough, however, the word which now, in popular legal language, has the widest signification of all the terms of the Law of Property in Land, is the modern, and historically incorrect, word ' premises.' We say historically incorrect, advisedly ; for there can be little doubt that the adoption of this word to signify an interest in land was due to an ignorant misunderstanding. Conveyancers had long used the word premises in the deeds which they drafted, in its proper significance, viz., ' that which has been set down before.' Thus, they would describe a settlor of land as conveying ' in consideration of the premises ' meaning the circumstances previously explained in the recitals and other preceding clauses of the settlement. Reading the word in this connection, and not understanding its meaning, auctioneers, land agents, and other unlearned persons, assumed that it signified the interest in land which was the subject of the conveyance or settlement ; and, having to describe that interest in announcing or negotiating a sale, would describe it as ' the premises to be sold.' From this it was easy to pass from the interest in question to the land itself, buildings or other subject-matter of the interest. And so the word ' premises,' qualified, perhaps, by some equally inappropriate adjective, e.g., ' freehold premises ' has now come to stand equally for any interest in land, or any subject-matter of such interest."

As Mr. Holme more or less asks in his letter for scathing comments, I hope he will not take too seriously the reference in the above quotation to " *unlearned persons.*"

Whether the user of the word " premises," in its present meaning of land and/or buildings, is historically incorrect or not, it is used in that sense in several Acts of Parliament, e.g., the Representation of the People Act, 1918, s. 1, and in many places in the Licensing (Consolidation) Act, 1910, and the Licensing Act, 1921 ; curiously enough, although I only made a cursory search, I was not able to find it in the Law of Property Act, 1925.

Nuneaton. A. C. BRADBURY.
18th August.

Reviews.

Notable British Trials. The Trial of Guy Fawkes. Edited by DONALD CARSWELL, of the Middle Temple, Barrister-at-Law. 1934. Demy 8vo. pp. ix and 191. London and Edinburgh : William Hodge & Co., Ltd. 10s. 6d. net.

This book is the best thing which has appeared for some time in the series it continues. For historical insight, literary quality, completeness of presentation and the salt of wit, the introduction leaves nothing to be desired. Those who have been accustomed to take the Gunpowder Plot for granted in the official version circulated by Cecil's Government will be surprised to find with how much mystery the inner facts of the conspiracy are veiled and how strong is the evidence tending to show that the plot was deliberately fostered by the King's ministers for the sake of the anti-Catholic panic which its discovery would create. The imaginary modern parallel is particularly ingenious and the vivid portraits of all the personalities involved in the affair rescue the whole business from the regions of melodrama where it has been too long confined and bring it into historical perspective. The attractive account of Robert Catesby and the balanced though somewhat unfavourable one of Father Garnet should excite a certain amount of discussion. An analogy to the Reichstag fire is hinted at and the whole treatment of the circumstances is one of living criticism and inquiry. Whoever is not content with stale second-hand history should read this work from the beginning of the introduction to the end of the text of the last trial.

The British Year Book of International Law, 1934. Fifteenth year of issue. Royal 8vo. pp. vi and (with Index) 240. London : Humphrey Milford, Oxford University Press. 16s.

Dr. Kenneth Johnston has a closely reasoned article on " Canada's Title to Hudson Bay and Hudson Strait," and concludes " that Canada's title to Hudson Bay and Hudson Strait is now indisputable, and that these great areas form an integral part of Canada's maritime domain on a par with Great Bear, Great Slave and Winnipeg Lakes." This view will surprise only those who have not made themselves

conversant with the history of this geographical area; it will probably not commend itself to some foreign countries.

An interesting examination of the work of Sir Leoline Jenkins in the Admiralty Court during the reign of Charles II, by Mr. D. J. Llewellyn Davies, shows "that the principle of looking beyond the immediate destination of a cargo" carried by a neutral "was well established in Prize proceedings at the end of the seventeenth century."

Mr. S. Dobrin considers the difficulties which arise from the application of the English doctrine of *Renvoi* to the Soviet law of succession, and the great hardship it works for Russian refugees.

There are also articles on "Classification in Private International Law," by Mr. W. E. Beckett; "Prescription of Claims in International Law," by Mr. B. E. King; and "Act of State in English Law," by Mr. E. C. S. Wade.

To the reviewer the final article, on "Do Treaties need Ratification," was of especial interest. There is a very clear differentiation between ratification in the international sense and ratification in the constitutional sense. The use of the same term for both leads to some confusion of mind. They are, of course, often closely related to one another. The whole discussion is an exceedingly useful contribution to the literature of a difficult and rather pressing subject.

The usual notes on decisions and reviews of books complete one more volume in a valuable series.

The Law of Trusts. By GEORGE W. KEETON, M.A., LL.D., of Gray's Inn, Barrister-at-Law, Vice-Dean of the Faculty of Law, University College. 1934. Royal 8vo. pp. xlvi and (with Index) 358. London: Sir Isaac Pitman & Sons, Ltd. 25s. net.

This volume sets out the principles of law and equity governing trusts and trustees in a form suited to the requirements of students as well as of practitioners. It seems to fill a gap in the legal literature upon this subject, being, so far as we are aware, the first substantial text-book dealing with the law of trusts issued since the Trustee Act, 1925, and other property statutes of that year were passed. The learned author has set himself to deal with the subject in a manner that should be particularly helpful to law students. He points out that recent decisions, as exemplified by *Re Vickery* [1931] 1 Ch. 572, have tended to emphasise the fact that the exact scope of the changes introduced by the Act of 1925 is not as yet entirely clear, and that the conception of the trust in English law is steadily changing. In regard to the latter, he cites the *Archer-Shee Cases* (see *Archer-Shee* v. *Garland* [1931] A.C. 212) and the case of *Strathcona S.S. Company* v. *Dominion Coal Company* [1926] A.C. 108. In a volume exceeding 350 pages the entire subject is fully traversed and an exhaustive table of case law is provided showing the diligent manner in which the volume has been prepared. A well-chosen index provides good assistance to students in search of information on any particular point.

Industrial Assurance Law. By A. J. SUENSON-TAYLOR, O.B.E., M.A., F.C.I.I., of the Middle Temple, Barrister-at-Law. 1934. Demy 8vo. pp. xi and (with Index) 128. London: Sir Isaac Pitman & Sons, Limited. 6s. net.

This is a pioneer book in which the relevant statutes are treated in detail with reference to decided cases, some of which are shortly reported. It will prove of practical value to students of industrial assurance law and to those who are engaged in the industrial assurance branch of life offices. The importance of the subject may be gathered from the fact that the business involved employs over 80,000 persons and affects about 80,000,000 policies in this country, on which no less than £50,000,000 is collected annually in premiums.

[All books acknowledged or reviewed can be obtained through The Solicitors' Law Stationery Society, Limited London, Liverpool and Birmingham.]

Notes of Cases.

Judicial Committee of the Privy Council.

Sheo Swarup and Others *v.* **The King-Emperor.**

Lord Blanesburgh, Lord Thankerton, Lord Russell of Killowen, Sir John Wallis and Sir Shadi Lal. 26th July, 1934.

CRIMINAL LAW—INDIA—CROWN'S APPEAL AGAINST AN ACQUITTAL—JURISDICTION OF APPELLATE COURT—REVIEW OF EVIDENCE OF FACTS.

This was an appeal by Sheo Swarup and five others from a judgment of the Allahabad High Court, dated the 20th April, 1933, which reversed a judgment of the sessions judge at Cawnpore acquitting the appellants of charges of murder and other offences alleged to have been committed during the Cawnpore riots in March, 1931. The High Court convicted the appellants of the offences and sentenced them to transportation for life. The appeal against the acquittal by the sessions judge was presented by the public prosecutor by the direction of the local government. The main questions in the present appeal were: (*a*) Whether the High Court, in reversing the judgment of the sessions judge, by which the appellants were acquitted, had rightly interpreted its powers and functions and acted on principles by which it should be guided as a court of appeal; and (*b*) whether there were any grounds on which the reversal of the judgment of the sessions judge could be justified?

Lord RUSSELL OF KILLOWEN, in giving the judgment of the Board, said that the sessions judge formed a clearly expressed opinion that the whole case was riddled with perjury. In their lordships' opinion there was no foundation for the view, apparently supported by the judgments of some courts in India, that the High Court had no power or jurisdiction to reverse an order of acquittal on a matter of fact, except in cases in which the lower court had "obstinately blundered," or had "through incompetence, stupidity, or perversity" reached such "distorted conclusions as to produce a positive miscarriage of justice," or had in some other way so conducted or misconducted itself as to produce a glaring miscarriage of justice, or had been tricked by the defence so as to produce a similar result. The relevant sections of the Code of Criminal Procedure gave to the High Court full power to review at large the evidence on which the order of acquittal was founded, and to reach the conclusion that on that evidence the order of acquittal should be reversed. Appeal dismissed.

COUNSEL: *D. N. Pritt*, K.C., and *Sidney Smith*, for the appellants; *A. M. Dunne*, K.C., and *W. Wallach*, for the Crown.

SOLICITORS: *Hy. S. L. Polak & Co.*; *Solicitor, India Office.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Court of Appeal.

Montague Burton Ltd. *v.* **Commissioners of Inland Revenue.**

Lord Hanworth, M.R., Slesser and Romer, L.JJ. 3rd and 4th July, 1934.

REVENUE — COMPANY — SUR-TAX — DEVELOPMENT OF BUSINESS—USE OF PROFITS—INCOME OF COMPANY DEEMED TO BE INCOME OF MEMBERS—FINANCE ACT, 1922 (12 & 13 Geo. 5, c. 17), s. 21 (1).

Appeal from a decision of Finlay, J.

The company was incorporated in 1917. In the year of income tax assessment ending the 31st March, 1929, its profits were £371,328. During that year it had expended £630,478 on the expansion of its business. For this purpose it had made use of its profits, obtained extended credits and overdrafts and mortgaged properties purchased. It declared a dividend of 100 per cent. B owned practically all the shares and the dividend amounted to £45,000; £3,000 was paid to him and the remainder of the amount was set off against a

debt of £1,000,000, which he owed to the company. The company, having in February, 1929, contracted to sell its undertaking to a new company, a winding up resolution was passed shortly after the end of its financial year on the 31st March, 1929. The Commissioners made an order under s. 21 (1) of the Finance Act, 1922, directing that for the purposes of the assessment of super-tax (now designated sur-tax) the income of the company for the year in question should be deemed to be the income of the members, on the ground that it had not "distributed to its members in such manner as to render the amount distributed liable to be included . . . in the statements of their total income for the purposes of super-tax a reasonable part of its actual income from all sources." Finlay, J., affirmed the direction.

Lord HANWORTH, M.R., dismissing the appeal, said that there was evidence that the company had not distributed a reasonable part of its income, and s. 21 (1) applied, though under the proviso regard must be had to the requirements of "the maintenance and development" of the business.

COUNSEL: *Greene*, K.C., and *Frederick Grant*; *The Attorney-General* (Sir Thomas Inskip, K.C.), *The Solicitor-General* (Sir Donald Somervell, K.C.) and *R. Hills*.

SOLICITORS: *Maxwell, Batley & Co.*, agents for *Simpson, Curtis & Burrill*, of Leeds; *Solicitor of Inland Revenue*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Doyle *v.* White City Stadium Ltd., and Others.

Lord Hanworth, M.R., Slesser and Romer, L.JJ.
10th and 11th July, 1934.

CONTRACT—INFANT—BOXER—INFANT'S BENEFIT—RULES—ALTERATION—NO NOTICE.

Appeal from a decision of MacKinnon, J.

The plaintiff, an infant, who was a boxer, claimed £3,000 in respect of a boxing contest in which he took part at the White City Stadium under the sanction of the British Boxing Board of Control (1929). In the contest he had been disqualified for hitting below the belt. The foul was not deliberate. His application to the Board for a licence had contained the following words: "I hereby apply for a licence as a boxer, and if the licence is granted to me, I declare to adhere strictly to the rules of the British Boxing Board of Control (1929) as printed, and abide by any further rules and alterations to existing rules as may be passed." At that time, under these rules, boxers' money could be stopped "only when disqualified for committing a deliberate foul," and in certain other events. Subsequently, this rule was altered so as to read: "Boxers in case of disqualification are only entitled to receive bare travelling expenses pending the decision of the board or branch on the circumstances of the case, when the board or branch may deal with the money as it thinks fit." MacKinnon, J., gave judgment for the plaintiff against the Board, holding that he was not bound by the amended rule.

Lord HANWORTH, M.R., allowing the appeal, said that the new rule was entirely directed to preserving clean fighting and enured to the benefit of all contestants. A contract entered into with an infant must be looked at as a whole to see whether it was for his benefit (*de Francesco* v. *Barnum*, 45 Ch. D. 430; *Corn* v. *Mathews* [1893] 1 Q.B. 310; *Clements* v. *London and North Western Railway Co.* [1894] 2 Q.B. 482). This contract was for the infant's benefit, and he could not escape from it on the ground of infancy. Nothing in the nature of a penalty had been imposed. Moreover, there was no implied proviso that the plaintiff should have notice of a change in the rules before he was bound by it.

SLESSER and ROMER, L.JJ., agreed.

COUNSEL: *Sir Patrick Hastings*, K.C., and *T. Beresford*; *Serjeant Sullivan*, K.C., and *M. O'Connor*.

SOLICITORS: *Ellis & Ellis*; *Edmond O'Connor & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Gissing *v.* Liverpool Corporation.

Lord Hanworth, M.R., Romer and Maugham, L.JJ.
12th and 13th July, 1934.

LOCAL GOVERNMENT—POOR LAW—SUPERANNUATION SCHEME—CONTRIBUTION BY DEDUCTION—GUARDIANS' FAILURE TO DEDUCT—TRANSFER OF DUTIES TO LOCAL AUTHORITIES—POOR LAW OFFICERS SUPERANNUATION ACT, 1896 (59 & 60 Vict., c. 50), ss. 12, 13—LOCAL GOVERNMENT ACT, 1929 (19 Geo. 5, c. 17), s. 124 (1).

Appeal from a decision of Farwell, J.

From 1897, the West Derby Board of Guardians, Liverpool, employed the plaintiff as a cleaner. Till October, 1929, they failed to deduct contributions from her wages under ss. 12 and 13 of the Poor Law Officers Superannuation Act, 1896. Thereafter, they made due deductions of 6d. a week, and an additional 1s. 6d. in respect of arrears till in April, 1930, by virtue of the Local Government Act, 1929, they were superseded by the Corporation. Till February, 1932, the Corporation continued the deductions, when they ceased them, informing the plaintiff that she was not within the Act of 1896, and returning her the total of her contributions which she accepted under protest. Farwell, J., held that she had not made all "the annual contributions required by the Poor Law Officers Superannuation Act, 1896," and so was not within s. 124 (1) of the Local Government Act.

Lord HANWORTH, M.R., allowing the appeal, said that the application of s. 124 (1) did not depend on every payment required by the Act of 1896 having been made. At the time the Guardians were abolished, the plaintiff was entitled to the benefit of the superannuation scheme. Apart from their mistake, she had made every effort to comply with the Act. She was an officer or servant within s. 124 (1).

ROMER and MAUGHAM, L.JJ., agreed.

COUNSEL: *Jenkins*, K.C., and *H. Buckmaster*; *Gover*, K.C., and *H. Glover*.

SOLICITORS: *J. M. McDonnell, Jackson & Co.*; *F. Venn and Co.*, Agents for *Walter Moon*, Town Clerk, Liverpool.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

Rex *v.* Donovan.

Lord Hewart, C.J., Swift and du Parcq, JJ. 27th July, 1934.

CRIMINAL LAW—ALLEGED ASSAULT—NO PROOF OF UNLAWFUL ACT—BURDEN OF NEGATIVING CONSENT.

This was the appeal against conviction and sentence of John George Donovan, an engineer, who had been convicted at Surrey Quarter Sessions of assaulting a girl and had been sentenced to eighteen months' imprisonment with hard labour.

SWIFT, J., giving the considered judgment of the court, said that the chairman summed up to the jury on the footing that the question "consent or no consent" was the vital issue. If it were assumed that a verdict of guilty could be justified in this case only by proof that there was absence of consent, certain observations might properly be made. First, it was of importance that the jury should be left in no doubt as to the incidence of the burden of proof in relation to consent. The court had no doubt that the facts proved in the present case were such that the jury might reasonably have found consent. Unless a jury was satisfied beyond reasonable doubt that the conduct of the person concerned had been such that, viewed as a whole, it showed that she did not consent, then the prisoner was entitled to be acquitted. The court could not find that the chairman ever gave a clear direction to the jury that the onus of negativing consent was on the prosecution. It was impossible to say that facts had been proved which showed Donovan's act to have been unlawful in itself. Without proof of such facts, he could only be convicted if the prosecution negatived consent, and on the issue of consent there was a misdirection which might have

led to a wrong verdict. The appeal would be allowed, and the conviction quashed.

COUNSEL: *G. B. McClure*, for Donovan; *G. C. L. DuCann*, for the prosecution.

SOLICITORS: *Wilkinson, Howlett & Moorhouse; Wontner and Sons.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Chancery of Lancaster.

Re Rawlinson, deceased: Wilson and Another *v.* Banks and Others.

Sir Courthope Wilson, V.-C. 24th April, 1934.

WILL—DEATH IN 1872—SETTLED LAND—INTESTACY AS FROM 1931—NO HEIR—PERSONS ENTITLED—LAW OF PROPERTY ACT, 1925, Sched. I, Pt. 2, para. 6 (*c*)—SETTLED LAND ACT, 1925, ss. 7 (1) (5), 75 (5)—ADMINISTRATION OF ESTATES ACT, 1925, s. 22.

Petition.

By his will dated the 10th February, 1872, Edward Rawlinson, who died on the 14th February, 1872, devised to his trustees certain real estate therein mentioned, upon trust to permit his adopted daughter, the defendant Agnes Banks, to receive the rents thereof during her life, and from her decease to permit her eldest son to receive the rents thereof during the term of his life (with provision for maintenance during his minority). The testator then proceeded to dispose of the said real estate in certain events, which did not happen, so that, as was declared by an order made on the 28th October, 1930, the said real estate was undisposed of as from the death of Hector John Banks, the only son of Agnes Banks. Agnes Banks died on the 3rd September, 1926, leaving her surviving her said son and two daughters, the defendants Mabel Mary Banks and Minnie Sarah Shaw, to whom she devised all her real estate in equal shares. Hector John Banks died on the 11th May, 1931, leaving him surviving one son, the defendant John Holden Banks, who was (in the events which had happened) the sole beneficiary under his will, of which the defendant W. F. Holden was the surviving executor. The said real estate was now represented by the following items of real and personal property: (*a*) £200 4 per cent. L.M.S.R. Debenture Stock, representing part of the proceeds of sale of the said real estate sold by the trustees under a power given by the testator's will; (*b*) four dwelling-houses in Lancaster purchased with part of the proceeds of sale of the said real estate sold by Agnes Banks as tenant for life; (*c*) £520 11s. 3d. 3½ per cent. Conversion Stock representing the net proceeds of sale of a dwelling-house in Lancaster sold by consent on the 23rd March, 1932; (*d*) £157 4½ per cent. L.N.E.R. First Preference Stock, representing part of the proceeds of sale of the said real estate sold by Agnes Banks as tenant for life; and (*e*) £101 19s. 3d. cash in bank, representing rents and income received since the death of Hector John Banks. By the above-mentioned order an inquiry was directed to ascertain the persons entitled to any estate of the testator as to which he died intestate. After exhaustive inquiries the registrar certified that he was unable to find them, and the petition (presented by John Lowe Wilson and Richard Shaw, as trustees of the settlement), as amended, asked the court to determine upon whom and in what capacity and for what estates and interests the said items of real and personal property representing the said real estate of the testator had devolved. Three claims were put forward. First, that of the devisees under the will of Agnes Banks; secondly, that of the executor of the will of Hector John Banks and of the sole beneficiary thereunder; and, thirdly, that of His Majesty in right of his Duchy of Lancaster. In addition to the cases mentioned in the judgment, counsel referred to *Re Lashmar* [1891] 1 Ch. 258.

THE VICE-CHANCELLOR, in the course of a reserved judgment, said that different considerations applied to the various items of property, and continued: "First, with regard to the real estate, it is conceded that by virtue of the Law of Property Act, 1925, Sched. I, Pt. 2, para. 6 (*c*), the legal estate in it became vested on the 1st January, 1926, in Agnes Banks, the first tenant for life in fee simple. On her death s. 22 of the Administration of Estates Act, 1925, applied, and she must be deemed to have appointed as her special executors in regard to the settled land the persons who were then the trustees of the settlement, namely, the present plaintiffs. By virtue of s. 7 (1) of the Settled Land Act, 1925, they took it on trust to convey it to the next tenant for life, Hector John Banks, 'if and when required so to do.' He died on the 11th May, 1931, without having required such conveyance, but Mr. Ackroyd, on behalf of his representative, contends that the maxim applies that 'Equity regards that as done which ought to be done' (see *Lechmore* v. *Earl of Carlisle*, 3 P. Wms. 215), and the property must therefore be deemed to have been conveyed to Hector John Banks. There are two answers to this contention: First, that the maxim was not meant to benefit third parties, but only to protect the interest of parties to the trust: *Walker* v. *Denne*, 2 Ves. Jun. 170. Hector John Banks' interest under the trust ceased with his death, and thereupon the plaintiffs would hold the testator's real estate under s. 7 (5) of the Settled Land Act, upon trust to convey it to the testator's heir-at-law if he could be found. No one claiming through Hector John Banks has now any equity to claim the application of the maxim referred to. Further, bearing in mind the concluding words of s. 7 (1), 'if and when required so to do,' and that no such request or requirement was made, it cannot be said that such a conveyance ought to have been made, and it is not therefore deemed to have been made. No heir-at-law having established his claim, and although the plaintiffs have not put forward any claim on their own behalf, I must declare, in answer to question (1) that the plaintiffs are entitled to retain the property, not as part of the estate of Agnes Banks but for their own benefit." The Vice-Chancellor said that this was the position as regards item (*b*), and also, since the right of the Duchy must be ascertained as at the death of Hector John Banks (see *Taylor* v. *Heygarth*, 14 Sim. 8), as regards item (*c*), together with so much of item (*e*) as consisted of rents of the real estate and interest on the investment mentioned in item (*c*) accrued since that date. As regards items (*a*) and (*d*), the Vice-Chancellor said "these are claimed by the Duchy as *bona vacantia*, and in my judgment this claim succeeds: *Re Bond* [1901] 1 Ch. 15. Mr. Ackroyd, on behalf of the devisees under Agnes Banks' will, strenuously contended, and his argument was adopted by Mr. Easton, on behalf of the defendants Mabel Mary Banks and Minnie Sarah Shaw, that these capital moneys were to be treated as land under the Settled Land Act, 1925, s. 75 (5), and were to devolve in the same way as the land from which they arose, but it must be noted that the concluding words of that sub-section are 'would if not disposed of have been held and have gone under the settlement.' This limits the operation of the sub-section to interests arising under the settlement. The claim of the Duchy to *bona vacantia* is not one arising under the settlement, but is the claim of a stranger to the settlement claiming by title paramount. Therefore, I hold that items (*a*) and (*d*) and so much of item (*e*) as represents interest on (*a*) and (*d*) since the death of Hector John Banks pass to the Duchy as *bona vacantia*."

COUNSEL: *E. C. C. Firth*, for the plaintiffs; *E. Ackroyd*, for W. F. Holden and J. H. Banks; *J. M. Easton*, for M. M. Banks and M. S. Shaw; *F. H. B. Hodgson*, for the Attorney-General of the Duchy;

SOLICITORS: *Clark, Oglethorpe & Sons*, Lancaster, for the plaintiffs, and for the defendants W. F. Holden and J. H. Banks; *W. H. Winder*, Lancaster, for the defendants M. M.

Banks and M. S. Shaw; *Buck & Dickson*, Preston, agents for the *Duchy Solicitor*, for the Attorney-General of the Duchy.

[Reported by R. A. FORRESTER, Esq., Barrister-at-Law.]

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Rules and Orders.

THE RULES OF THE SUPREME COURT (No. 3), 1934.
DATED JULY 17, 1934.

We the Rule Committee of the Supreme Court, hereby make the following Rules:—

1. The following amendments shall be made in Order LVB:—

(*a*) In the headings which precede Rules 1 and 59, the expression "V. Local Government Act, 1933, * Part X." shall be substituted for the expression "V. Audit (Local Authorities) Act, 1927."†

(*b*) In Rule 59, the expression "section 229" shall be substituted for the expression "section 2"; and the expression "subsection (1) of section 230" shall be substituted for the expression "subsection (2) of that section."

(*c*) In Rule 64—

In the introductory phrase, the expression "subsection (1) of section 230" shall be substituted for the expression "subsection (2) of section 2."

In Paragraph (*a*), the words "whose accounts were subject to the audit" shall be substituted for the words "to whose accounts or to the account of whose officer the surcharge relates."

In Paragraphs (*b*) and (*c*), the words "local government elector for" shall be substituted for the words "ratepayer or owner of property in."

In Paragraph (*d*), the words "local government elector" shall be substituted for the words "ratepayer or owner."

In Paragraph (*e*), the words "local government elector" shall be substituted for the words "ratepayer or owner of property."

(*d*) In Rule 65, the words "local government elector" shall be substituted for the words "ratepayer or owner of property."

(*e*) In Paragraph (1) of Rule 68, the expression "subsection (3) of section 229" shall be substituted for the expression "subsection (1) of section 2."

(*f*) In Paragraph (1) of Rule 69, the expression "subsection (3) of section 229" shall be substituted for the expression "subsection (1) of section 2."

(*g*) In Rule 70, the expression "Local Government Act, 1933" shall be substituted for the expression "Audit (Local Authorities) Act, 1927."

2. In paragraph (1) of Rule 19 of Order LIX the words "and an appeal under subsections (3) and (4) of section 14 of the Pharmacy and Poisons Act, 1933" ‡ shall be inserted after the words "Therapeutic Substances Act, 1925."§

3.—(1) At the end of Order LIX there shall be inserted the following Rule:—

"22. Where a case has been stated by justices under section two of the Summary Jurisdiction Act, 1857,‖ or under section thirty-three of the Summary Jurisdiction Act, 1879,¶ the appellant shall

(*a*) within ten days after receiving the case transmit it to the High Court; and

(*b*) within 14 days after receiving the case serve on the respondent a notice in writing of the appeal and a copy of the case."

(2) In section two of the Summary Jurisdiction Act, 1857, the words from "and such party" to the end of the section are hereby repealed, as well with respect to cases stated under section thirty-three of the Summary Jurisdiction Act, 1879, as with respect to cases stated under the said Act of 1857.

4. "In the year 1934—

(*a*) Notwithstanding anything contained in Rule 1 or paragraph (1) of Rule 4 of Order LXIII the Michaelmas sittings of the Court of Appeal and of the High Court of Justice shall commence on the 2nd day of October and the Long Vacation of the several Courts and offices of the Supreme Court shall for all purposes terminate on the 1st day of October; and

(*b*) Notwithstanding anything contained in Rule 4 and 4A (1) of Order LXIV all summonses may be issued and pleadings may be amended delivered or filed in the Long Vacation on and after the 20th day of September in all causes or matters to which those Rules apply."

5.—(1) These Rules may be cited as the Rules of the Supreme Court (No. 3) 1934, and the Rules of the Supreme Court, 1883,** shall have effect as amended by these Rules.

(2) These Rules shall come into operation on the 3rd day of September, 1934.

(3) Rule 3 shall have effect with respect to every case stated under either of the Acts therein mentioned which is delivered to the appellant on or after the 3rd day of September, 1934, and notwithstanding anything in paragraph (2) of the said Rule the Acts therein mentioned shall continue to have effect with respect to every case stated delivered to the appellant before that day.

Dated the 17th day of July, 1934.

Sankey, C.	*Rigby Swift*, J.
Hewart, C.J.	*A. C. Clauson*, J.
Hanworth, M.R.	*T. J. O'Connor.*
F. B. Merriman, P.	*A. W. Cockburn.*
F. H. Maugham, L.J.	*C. H. Morton.*
A. A. Roche, J.	*Roger Gregory.*

* 23–4 G. 5, c. 51. † 17–8 G. 5. c. 31.

‡ 23–4 G. 5. c. 25.
§ 15–6 G. 5. c. 60.
‖ 20–1 V. c. 43.
¶ 42–3 V. c. 49.
** S. R. & O. Rev. 1904, XII, Supreme Court, E. pp. 54-117 (printed as amended to Dec. 31, 1903). For subsequent amendments, *see* "Index to S.R. & O. in Force, June 30, 1933" at pp. 888-91.

Legal Notes and News.

Honours and Appointments.

It is announced from the Colonial Office that His Majesty the King has been pleased to approve the appointment of Mr. CYRIL GERARD BROOKE FRANCIS, Attorney-General, Tanganyika Territory, to be Judge of the High Court of Northern Rhodesia, in succession to Mr. Roger Evans Hall, whose appointment as Chief Justice of Uganda was announced recently.

Mr. R. C. E. AUSTIN, LL.B. (Lond.), Assistant Solicitor and Assistant to the Town Clerk of Wandsworth, has been appointed Town Clerk of Penzance. Mr. Austin was admitted a solicitor in 1924.

Wills and Bequests.

Mr. Bernard Baines, solicitor, of Streatham, left £10,317, with net personalty £9,677.

Mr. Henry Curwen Biscoe-Smith, solicitor, of Emsworth, Hants, left £28,420, with net personalty £24,735.

Mr. George Dodgson Kennedy, solicitor, of Aughton, Lancs, left £24,891, with net personalty £12,355.

INTERNATIONAL LAW ASSOCIATION.

The thirty-eighth conference of the International Law Association will be held at Budapest from the 6th to the 10th September next and representative delegations from twenty-three nations are expected to attend. Hungary is extending a most cordial welcome to the conference.

The British delegation will be under the chairmanship of Lord Blanesburgh, President of the Association.

Room has been found in the agenda of the conference for the discussion of many interesting problems both of public and private International law, but most important perhaps of all will be the very timely discussion upon the report on the "Effect of the Briand-Kellogg Pact of Paris on International Law," the work of a strong committee of the Association, composed of Sir John Fischer Williams, Professor Brierly, Professor A. D. McNair, Dr. C. John Colombos, Mr. Campbell, Judge Caloyanni, Mr. C. G. Dehn, Mr. Palliccia with Mr. W. A. Bewes as *Convener*. Their report deals with the proper interpretation to be placed on the Pact with a view to the due appreciation of its implications and with special reference to its second clause which definitely excludes any but pacific means for the solution of disputes and conflicts which may arise between the High Contracting Parties.

Other subjects of present interest set down for discussion include the creation of international tribunals of private law, the laws of insolvency and trade marks viewed from an international standpoint, payments in gold and in foreign currencies, cartels and the nationality of married women. A model arbitration clause for use in transactions involving recourse to the principles of private law will also be discussed.

The conference will be officially welcomed on behalf of the Royal Hungarian Government by the Honorary President, His Excellency Andór Lázár, Hungarian Minister of Justice, and Lord Blanesburgh will reply to this speech of welcome. His Excellency Dr. István Osvald, Second President of the *Curia Regis* (the Hungarian Supreme Court of Judicature), will then deliver his inaugural address. His Highness Admiral Horthy, Regent of Hungary, will receive in audience the leaders of the delegations to the Conference.

TRIBUTES TO THE LATE LORD JUSTICE.

On taking his seat in the Vacation Court last Wednesday (says *The Times*), Mr. Justice Crossman referred to the death of Lord Justice Scrutton. Addressing Mr. H. J. Wallington, K.C., his lordship said that no doubt when the courts reassembled in October, a fitting tribute would be paid to the qualities of the late Lord Justice, but he felt that the members of the Bar then in court would desire to join in expressing their sense of the great loss that the Bench and the Bar and the whole country had suffered by the death of a great lawyer and a great judge.

Mr. Wallington, on behalf of the Bar, said that everybody who had had the honour of practising before Lord Justice Scrutton and who knew anything about him would desire to be associated with Mr. Justice Crossman's remarks. The death of the Lord Justice had cast a gloom over the whole legal profession, and they had lost not only a great lawyer but a great friend.

ELDON LAW SCHOLARSHIP.

The Trustees of the Eldon Law Scholarship will meet on 22nd November to consider the applications for a scholarship. The scholarship is of the annual value of £200. Full information of the terms under which it is held can be obtained from the Trustees' Secretary, Mr. W. G. Trower, 5, New-square, Lincoln's Inn, W.C.2.

CENTRAL CRIMINAL COURT, 1834–1934.

The Central Criminal Court Bar Mess will hold a dinner at the Middle Temple Hall (by kind permission of the Treasurer and Masters of the Bench) to celebrate the centenary of the Central Criminal Court (which was established by the Central Criminal Court Act, 1834, and which came into operation on 31st October, 1834) on Thursday, 1st November, 1934. The official guests of the evening will be the Commissioners of the Central Criminal Court (which include the Lord Mayor, the Lord Chancellor, the Lord Chief Justice, the judges of the King's Bench Division, the aldermen of the City of London, the Recorder, the Common Serjeant and the Commissioner) and other guests representing every public department concerned with the administration of criminal justice in London. The hon. secretary is Mr. Albert Crew, 3, Plowden Buildings, Temple, E.C.4.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 30th August, 1934.

	Div. Months.	Middle Price 22 Aug. 1934.	Flat Interest Yield.			†Approximate Yield with redemption		
			£	s.	d.	£	s.	d
ENGLISH GOVERNMENT SECURITIES								
Consols 4% 1957 or after	FA	112½	3	11	1	3	4	0
Consols 2½%	JAJO	80¼	3	2	1	—		
War Loan 3½% 1952 or after	JD	104⅝	3	7	1	3	3	7
Funding 4% Loan 1960-90	MN	115½	3	9	3	3	2	4
Victory 4% Loan Av. life 29 years	MS	112½xd	3	11	1	3	6	6
Conversion 5% Loan 1944-64	MN	119	4	4	0	2	12	1
Conversion 4½% Loan 1940-44	JJ	111	4	1	1	2	10	0
Conversion 3½% Loan 1961 or after	AO	105	3	6	8	3	4	5
Conversion 3% Loan 1948-53	MS	101¼	2	19	1	2	17	3
Conversion 2½% Loan 1944-49	AO	98	2	11	0	2	13	4
Local Loans 3% Stock 1912 or after	JAJO	92⅝	3	4	9	—		
Bank Stock	AO	369½	3	4	11	—		
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	84½	3	5	1	—		
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	91½	3	5	7	—		
India 4½% 1950-55	MN	112½	4	0	0	3	9	5
India 3½% 1931 or after	JAJO	93½	3	14	10	—		
India 3% 1948 or after	JAJO	80½	3	14	6	—		
Sudan 4½% 1939-73 Av. life 27 years	FA	116	3	17	7	3	11	4
Sudan 4% 1974 Red. in part after 1950	MN	110	3	12	9	3	3	10
Tanganyika 4% Guaranteed 1951-71	FA	111	3	12	1	3	2	4
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	102	2	18	10	2	16	0
L.P.T.B.4½% "T.F.A." Stock 1942-72	JJ	110	4	1	10	2	19	9
COLONIAL SECURITIES								
Australia (Commonw'th) 4% 1955-70	JJ	106	3	15	6	3	13	11
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	100	3	15	0	3	15	0
Canada 4% 1953-58	MS	107	3	14	9	3	9	10
Natal 3% 1929-49	JJ	98	3	1	3	3	3	5
New South Wales 3½% 1930-50	JJ	97	3	12	2	3	15	0
New Zealand 3% 1945	AO	99	3	0	7	3	2	3
Nigeria 4% 1963	AO	109	3	13	5	3	10	0
Queensland 3½% 1950-70	JJ	98	3	11	5	3	12	0
South Africa 3½% 1953-73	JD	104	3	7	4	3	4	3
Victoria 3½% 1929-49	AO	99	3	10	8	3	11	10
W. Australia 3½% 1935-55	AO	98	3	11	5	3	12	8
CORPORATION STOCKS								
Birmingham 3% 1947 or after	JJ	91	3	5	11	—		
Croydon 3% 1940-60	AO	98½	3	0	11	3	1	8
Essex County 3½% 1952-72	JD	104	3	7	4	3	4	1
*Hull 3½% 1925-55	FA	101	3	9	4	—		
Leeds 3% 1927 or after	JJ	91	3	5	11	—		
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	103	3	8	0	—		
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	78½	3	3	8	—		
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	91½	3	5	7	—		
Manchester 3% 1941 or after	FA	91	3	5	11	—		
Metropolitan Consd. 2½% 1920-49	MJSD	97	2	11	7	2	15	0
Metropolitan Water Board 3% "A" 1963-2003	AO	93⅓	3	4	2	3	4	9
Do. do. 3% "B" 1934-2003	MS	94	3	3	10	3	4	5
Do. do. 3% "E" 1953-73	JJ	98	3	1	3	3	1	10
Middlesex County Council 4% 1952-72	MN	111	3	12	1	3	3	8
‡ Do. do. 4½% 1950-70	MN	115	3	18	3	3	5	7
Nottingham 3% Irredeemable	MN	91	3	5	11	—		
Sheffield Corp. 3½% 1968	JJ	104	3	7	4	3	6	1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS								
Gt. Western Rly. 4% Debenture	JJ	109⅓	3	13	1	—		
Gt. Western Rly. 4½% Debenture	JJ	118½	3	15	11	—		
Gt. Western Rly. 5% Debenture	JJ	130	3	16	11	—		
Gt. Western Rly. 5% Rent Charge	FA	126½	3	19	1	—		
Gt. Western Rly. 5% Cons. Guaranteed	MA	124½xd	4	0	4	—		
Gt. Western Rly. 5% Preference	MA	112xd	4	9	3	—		
Southern Rly. 4% Debenture	JJ	107	3	14	9	—		
Southern Rly. 4% Red. Deb. 1962-67	JJ	108½	3	13	9	3	10	5
Southern Rly. 5% Guaranteed	MA	124½xd	4	0	4	—		
Southern Rly. 5% Preference	MA	112xd	4	9	3	—		

*Not available to Trustees over par. ‡Not available to Trustees over 115.
†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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